


## Department of Planning and Zoning

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**TO:** Development Review Board  
**FROM:** Scott Gustin   
**DATE:** April 19, 2016  
**RE:** 14-1181CU/CA; 8 College Street et al

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**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: UR, RCO-RG Ward: 3, 4

Owner/Applicant: City of Burlington & State of Vermont / Dept. of Parks & Recreation

**Request:** Amendment for bike Path rehabilitation from Perkins Pier to North Beach. Amendment pertains to work between skate park and North Beach.

### **Applicable Regulations:**

Article 3 (Applications, Permits, & Project Review), Article 4 (Maps & Districts), Article 5 (Citywide General Regulations), Article 6 (Development Review Standards)

### **Background Information:**

The applicant is seeking approval to amend the previously approved bike path reconstruction project. In large part the project remains unchanged. Work associated with this amendment is mostly contained in the Urban Reserve and extends from the newly constructed skate park northward almost to North Beach. Changes from the original zoning permit include:

- Establishment of 3 pause places (i.e. sitting areas)
- Tree cutting and new tree and shrub planting
- Shoreline stabilization work

Shoreline work extends into the Special Flood Hazard Area. As required, copies of the project plans were sent to the VT DEC floodplain management office for review and comment on March 29, 2016. No comments have yet been received. Any comments received within the 30-day comment period will be incorporated into this amendment.

The path itself and associated impervious surface removal and green area restoration remain essentially unchanged.

The proposed work traverses multiple properties and two zoning districts. It is reviewed collectively as one project.

The Conservation Board reviewed this project on April 4, 2016. The Board unanimously recommended approval of the project as presented.

Previous zoning permit actions for this property:

- 6/2/14, Approval of bike path reconstruction from Roundhouse Point to North Beach
- 10/3/12, Approval of repair and reinforcement north of Starr Farm Beach
- 5/3/12, Approval of bike path slope stabilization
- 6/19/97, Approval to widen bike path width from Starr Farm Rd to first overlook

**Recommendation:** Certificate of Appropriateness and Conditional Use approval as per, and subject to, the following findings and conditions:

## **I. Findings**

### **Article 3: Applications and Reviews**

#### ***Part 5, Conditional Use & Major Impact Review:***

Conditional use review applies only to the section of work proposed within the Urban Reserve.

#### ***Part 5, Conditional Use & Major Impact Review:***

##### **Section 3.5.6**

##### **(a) Conditional Use Review Standards**

*Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:*

- 1. Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposed changes in this amendment have no impact on public utilities, facilities, or services.

**(Affirmative finding)**

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The Urban Reserve consists of vacant former industrial land. The lake lies to the west. The bike path presently runs through the middle of the Reserve and, as previously permitted, will be repositioned to come closer to the lakeshore. The proposed amendment includes additional tree cutting and new tree planting. None of the work adversely impacts the character of the area as defined in the purpose statement for this district. **(Affirmative finding)**

- 3. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

Nothing in the proposed amendment will bring about nuisance impacts from noise, odor, dust, heat, and vibrations. **(Affirmative finding)**

- 4. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit*

*availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

The proposed amendment will have no adverse impact on vehicular, bicycle, or pedestrian traffic. **(Affirmative finding)**

*and,*

5. *The utilization of renewable energy resources;*

No part of this amendment request prohibits the use of wind, solar, water, geothermal or other renewable energy resource. **(Affirmative finding)**

*and,*

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances;*

As the toe of the proposed shoreline work extends below 100' elevation, a state shorelands permit is likely required. The city has partial delegation of the shorelands program, but only above the 100' elevation. It is the applicant's responsibility to contact the State of Vermont to inquire as to shoreland permitting requirements. **(Affirmative finding as conditioned)**

**(b) Major Impact Review Standards:**  
**(Not applicable)**

**(c) Conditions of Approval:**

*In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:*

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.*

Nothing in this amendment is expected to generate offsite noise or glare substantial enough to require mitigation. **(Affirmative finding)**

2. *Time limits for construction.*

As with all zoning permits for work within the Urban Reserve, this amendment is valid for a period of 2-years. **(Affirmative finding as conditioned)**

3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*

The amendment materials do not specify days and hours of construction. The original zoning permit included construction hours of 7:00 AM – 6:00 PM, Monday – Saturday. Sundays and holidays are excluded. The same days and hours of construction should apply to construction associated with this amendment. **(Affirmative finding as conditioned)**

4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and,*

Any future enlargement or alteration will be reviewed under the zoning regulations in effect at that time.

5. Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

See recommended conditions of approval.

#### **Article 4: Maps & Districts**

##### ***Sec. 4.4.6, Recreation, Conservation, and Open Space Districts:***

###### ***(a) Purpose***

###### ***(2) RCO-Recreation/Greenspace (RCO-RG)***

The northern portion of work included in this amendment is located in the RCO-RG zone. This zone is intended primarily to provide a diversity of passive and active recreational opportunities. The proposed bike path work will contribute to future enjoyment of the path. **(Affirmative finding)**

###### ***(b) Dimensional Standards & Density***

Lot coverage within the RCO-RG portion of this project will remain essentially unchanged. **(Affirmative finding)**

###### ***(c) Permitted & Conditional Uses***

The outdoor recreational use is permitted in the RCO-RG zone and will not change. **(Affirmative finding)**

###### ***(d) District Specific Regulations***

**(Not applicable)**

##### ***Sec. 4.4.7, Urban Reserve District:***

###### ***(a) Purpose***

Most of the work associated with this amendment is contained within the Urban Reserve. This district is intended to temporarily preserve a large portion of the city's lakeshore and to reserve the right of future generations to determine the most appropriate combination of development and conservation. There is provision for recreational use and public access to the Reserve.

**(Affirmative finding)**

###### ***(b) Dimensional Standards & Density***

New lot coverage associated with realignment of the bike path through the Urban Reserve will be offset by removal of existing impervious surface. There will actually be a net decrease in lot coverage of 0.67 acre. **(Affirmative finding)**

###### ***(c) Permitted & Conditional Uses***

No change in use is proposed. Provision is made to allow for public recreational paths through the Reserve. **(Affirmative finding)**

###### ***(d) District Specific Regulations***

***1. Any and all improvements in this district shall be consistent with any and all development and use restrictions and easements as may otherwise be applicable to the property.***

The proposed amendment has no impact on this criterion. No change in use is proposed. The existing bike path will simply be realigned through the Urban Reserve. Continued use as a public

bike path appears to be consistent with restrictions and easements affecting the property.  
**(Affirmative finding)**

*2. Any authorization granted by the DRB shall include a prescribed duration for the activity after which such authority and all related permits shall expire. The DRB may consider an extension of this time period if such a request has been made prior to expiration. No permit should remain in effect for more than 2 years without reapplication and review pursuant to this section.*

The previous bike path reconstruction permit was granted and valid for 2 years. It will expire July 2, 2016. This amendment will take its place for another 2 years for work in the Urban Reserve and northward towards North Beach. **(Affirmative finding as conditioned)**

*3. As a condition of any approval by the DRB for projects involving temporary construction staging or seasonal snow storage, the site shall be restored to its prior condition once the temporary activity has been completed for which the DRB may require a bond or other necessary surety in a form satisfactory to the city attorney.*

**(Not applicable)**

***Sec. 4.5.4, Natural Resource Protection Overlay District:***

***(a) District Specific Regulations: Special Flood Hazard Area***

As part of this amendment, work within the Special Flood Hazard Area consists of three primary components:

- Shoreline revetment reconstruction (rebuild failed shoreline stone armoring)
- Shoreline stabilization (fill, vegetation, and some armoring)
- Pause place (staircase for access to the shoreline and water)

***(7) Special Review Criteria***

**A. The danger to life and property...**

Some of the shoreline work will extend into the lakeshore flood hazard area. Most of the construction involves placement (or replacement) of stone for stabilization and (regarding the stairs) access. Lakeshore flood dynamics are unlike those of river flood dynamics. The water does not flow at perceptible speeds and is not subject to constriction. Placement of the stone within the lakeshore flood zone will have no impact on flood heights or velocities. **(Affirmative finding)**

**B. The danger that material may be swept onto other lands...**

All of the construction within the flood zone will consist of large or medium size stone and will be anchored into the ground. There is little danger that the stone work will be swept away by flood waters. **(Affirmative finding)**

**C. The proposed water supply and sanitation systems...**

Not applicable.

**D. The susceptibility of the proposed facility and its contents to flood damage...**

The stone work is a protective measure against flood and storm damage to the Urban Reserve. The potential for flooding damage to the stone itself is minimal. **(Affirmative finding)**

**E. The importance of the services provided...**

The Urban Reserve is important to the Burlington community. Strengthening its shoreline will provide substantial protection to this property. **(Affirmative finding)**

**F. The availability of alternative locations...**

The point of the shoreline work is protect the property from flood and storm damage. Its placement within the flood zone is key to this function. It's location within the floodplain is acceptable. **(Affirmative finding)**

**G. The compatibility of the proposed use with existing development...**

Stone rip rap is commonplace along Burlington's lakeshore, including that within the Urban Reserve. **(Affirmative finding)**

**H. The relationship of the proposed use to the Municipal Development Plan...**

No new use is contained within this proposal. The bike path will be reconstructed and the existing armored shoreline will be repaired and stabilized. Insofar as there is provision for recreational use and public access to the Urban Reserve, the proposal can be found in compliance with the MDP. **(Affirmative finding)**

**I. The safety of access to the property...**

The shoreline work will have no effect on the safety of access to the property during times of flood. **(Affirmative finding)**

**J. The expected heights, velocity, duration, rate of rise...**

The maximum regulatory flood elevation along the lakeshore is 102' above sea level. The shoreline work will have no impact on flood heights, velocity, duration, rate of rise, or sediment transport. **(Affirmative finding)**

**K. Conformance with all other applicable requirements...**

See Articles 4, 5, and 6 of these findings.

***(c) District Specific Regulations: Riparian and Littoral Conservation Zone***

The subject property is affected by the Riparian and Littoral Conservation Zone (250' width from the 100' lakeshore elevation). This overlay zone limits the clearing of vegetation and new stormwater outfalls. This amendment includes the removal of 52 trees and some scrub growth within this overlay zone. Tree cutting is generally limited to that necessary for construction of the adjusted bike path route. New plantings consist of 150 trees and 160 shrubs. No new stormwater outfalls are proposed. As noted previously, the Conservation Board reviewed this proposal April 4, 2016 and unanimously recommended approval. **(Affirmative finding)**

**Article 5: Citywide General Regulations**

***Sec. 5.2.3, Lot Coverage Requirements***

See Article 4 above.

***Sec. 5.2.4, Buildable Area Calculation***

**(Not applicable)**

***Sec. 5.2.5, Setbacks***

See Article 4 above.

***Sec. 5.2.6, Building Height Limits***

See Article 4 above.

***Sec. 5.2.7, Density and Intensity of Development Calculations***

See Article 4 above.

***Sec. 5.5.1, Nuisance Regulations***

Nothing in the proposed amendment appears to constitute a nuisance under this criterion. The use as a public bike path will remain unchanged. **(Affirmative finding)**

***Sec. 5.5.2, Outdoor Lighting***

**(Not applicable)**

***Sec. 5.5.3, Stormwater and Erosion Control***

This amendment contains details relative to stormwater management and erosion control. These measures appear essentially the same as originally approved. Approval of the amended project plans has been granted by the Stormwater Administrator. **(Affirmative finding)**

**Article 6: Development Review Standards**

***Part 1, Land Division Design Standards***

**(Not applicable)**

***Part 2, Site Plan Design Standards***

***Sec. 6.2.2, Review Standards***

***(m) Landscaping and fences***

No formal landscaping is included in this amendment. As noted previously, some existing trees will be removed and new trees and shrubs will be planted. Generally, wooded areas will remain wooded. No new fencing is included in this proposal. **(Affirmative finding)**

***Part 3, Architectural Design Standards***

***Sec. 6.3.2, Review Standards***

**(Not applicable)**

**II. Conditions of Approval**

1. Days and hours of construction shall be limited to Monday – Saturday, 7:00 AM – 6:00 PM. Sundays and holidays are excluded. Modification of these hours shall require the approval of the Development Review Board and may take place via correspondence.
2. A State of Vermont shoreland protection permit, as administered by VT ANR, may be required.
3. This approval incorporates timely comments and stipulations issued by the State National Floodplain Insurance Program Coordinator at VT DEC as related to this project.
4. Approval Conditions Per Sec. 4.5.4, Natural Resource Overlay (f) District Specific Regulations: Special Flood Hazard Area, 8

In all Special Flood Hazard Areas (including Floodway areas) such conditions require that:

C. All development:

- (i) New construction and/or substantial improvements to structures shall be

reasonably safe from flooding and be:

1. Designed and adequately anchored to prevent flotation, collapse, or lateral movement during the occurrence of the base flood;
  2. Constructed of materials resistant to flood damage;
  3. Constructed by methods and practices that minimize flood damage; and
  4. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (ii) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;
  - (iii) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
  - (iv) All new construction and substantial improvements that have fully enclosed areas below the lowest floor shall: (Not applicable)
  - (v) All necessary permits be obtained from those governmental agencies from which approval is required by federal or state law.
- D. Residential Development: (Not applicable)
  - E. Non-Residential Development: (Not applicable)
  - F. Water Supply Systems: (Not applicable)
  - G. On-Site Waste Disposal Systems: (Not applicable)
  - H. Recreational Vehicles: (Not applicable)
5. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes as required.
  6. Standard conditions 1-15.